Crl.A. 262/2001
BEFORE
THE HON'BLE MR JUSTICE P. G. AGARWAL
THE HON'BLE MR JUSTICE K MERUNO

Heard Miss S. D. Baruah, learned Amicus Curiae and the learned Public Prosecutor, Assam. The accused-appellant has been convicted U/S 302 IPC for causing death of this own uncle Subha Kanta Bora. The learned Sessions Judge, Nagaon, sentenced the accused to imprisonment for life and pay a fine of Rs.1,000/-, in default, further imprisonment for one month.

Deceased Subha Kanta Bora, aged about 60 years, came to attend the Shradha ceremony at the accused's house and thereafter, he was taking rest in their house. It is alleged that the accused assaulted the deceased Subha Kanta Bora with a dao and thereafter, went to the Police Station and surrendered with the blood stained dao.

Dr. Dilip Kr. Baruah, (PW-4), who held the autopsy on the dead body and found as follows:

\Ante-mortem incised wound transversely situated across the right cheek about 2\ x …\ x Muscle deep, duration of which was about 15 hours.

Ante-mortem wound transversely situated across the right side of the neck, length of which was 4\ maximum breadth was about 1\ at about its middle. Both the ends were gradually tapering, maximum depth and the wound was about 1\ at about its center. The wound cuts through the muscles of the neck, major blood vessels with profound ante-mortem haemorrhage. The duration of the wound was 15 hours.\

In the opinion of the doctor, death has been due to the sock and haemorrhage as a result of the injury No.2.

In this case, we find that the incident had taken place inside the room and as such, there was no eyewitness. Bharat Bora (PW-2) is the own younger brother of the accused-appellant and he was in the house when the incident took place. He has deposed that while his uncle, deceased, was sleeping inside the room, there was nobody else inside the room. They heard the sound like 'dhap' 'dhap' and thereafter, they saw the accused going out of the room with a blood stained dao in his hand. Thereafter, the accused proceeded to the Police Station. They did not try to apprehend the accused as he was armed. Mat. Ext-1 is the weapon of assault seized by police from the accused. The evidence of PW-2 has not been seriously challenged and thus in the fact that he is the younger brother of the accused. He has no reason to falsely implicate his own brother for no apparent reasons. The post crime conduct of the accused surrendered along with the weapon of assault has also been deposed to by the Investigating Police Officer, Bhubaneswar Deka (PW-5). We, therefore, concurrent with the finding of the trial Court that the accused-appellant assaulted his uncle and killed him.

The learned Amicus Curiae has submitted that while the accused was in jail, he was found to be mentally sick and he underwent treatment at L.G.B. Mental Hospital, Tezpur and as such, the accused might not had been in proper mental state. The law is well settled that the crucial point of time for the purpose of getting protection the plea of insanity U/S 84 IPC is the time when the incident took place. The incident took place in the month of June, 1995 whereas the accused was found mentally unstable in the month of June, 1996. We, therefore, constrained to hold that protection U/S 84 IPC is not available to the accused.

Learned Amicus Curiae has further submitted that deceased was the own uncle of the accused. There was no motive on the part of the accused to kill his own uncle. The accused had no intension to cause death and may be in some weak moment. Considering the mental condition, he had assaulted his own uncle but the act may not constitute offence of murder U/S 300 IPC.

From the evidence of PW-2, we find that the accused was armed with dao and he was alone in the room. The doctor found only two injuries on the person of the deceased. Injury No.1 was minor one, whereas the injury No.2 proved fatal. We, therefore, find force in the submission that the accused had intensi

on to cause death; nothing prevented him from causing further injuries and no bo dy obstructed him from causing injuries and the accused himself came out from th e house with the dao and proceeded to the Police Station.

We, therefore, hold that the act of the accused constitutes an o ffence defined U/S 300 IPC and punishable U/S 304 (1) IPC.

In the result, the appeal is partly allowed, the conviction is modified and alte red to U/S 304 (1) IPC and the accused is sentenced to imprisonment for 10 years . The period of detention already undergone by the accused shall be set off U/S 428 Cr.P.C.

Send down the records.

The fee for the learned Amicus Curiae fixed at Rs.3,000/- (Rupee s Three thousand).